

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

HARRY McMULLEN,

Petitioner,

v.

**Case No. 2:07cv45
(Judge Maxwell)**

DOMINIC A. GUTIERREZ, Acting Warden,

Respondent.

**ORDER GRANTING MOTION FOR RECONSIDERATION
AND VACATING REPORT AND RECOMMENDATION**

On June 15, 2007, the undersigned issued a Report and Recommendation in which I recommended that this case be dismissed as prematurely filed. At issue, is the Bureau of Prisons' alleged policy of categorically limiting a prisoner's placement in a Community Corrections Center ("CCC") or halfway house for the last 10% of his or her sentence. Historically, the Bureau of Prisons does not review an inmate for CCC placement until he is within eleven to thirteen months of his projected release date. The petitioner's projected release date is October 24, 2008, which was approximately sixteen months after he filed his petition. However, in his motion for reconsideration, the petitioner has attached a Referral for CCC placement that establishes that he has been reviewed for placement and been assigned a recommended date of August 8, 2008. In addition, the referral indicates that he is a good candidate for direct placement on home confinement.

Accordingly, the petitioner's motion for reconsideration (Doc. 7) is **GRANTED** and the Report and Recommendation (Doc. 5) is **VACATED**. In addition, pursuant to Rule 15 of the Federal Rules of Civil Procedure, the petitioner's Motion for Leave (Doc. 8) is **GRANTED**.

IT IS SO ORDERED.

The Clerk is directed to mail a copy of this Order to the *pro se* petitioner.

DATED: January 30, 2008.

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE